**Under the Indian Gaming Regulatory Act, a tribal-state class III gaming compact may authorize a State to assess a Tribe’s class III gaming activities “in such amounts as are necessary to defray the costs of regulating such activity” 25 U.S.C. § 2710(d)(3)(C)(iii), but IGRA does not permit the State to impose any other tax, fee or assessment as a condition for entering into a compact.**

**The SDF, which is found in every current class III gaming compact (except for off-track wagering compacts) between California and California’s Tribes, was created to serve as the repository for tribal payments for the State’s necessary and reasonable costs of regulating tribal gaming, as well as to, among other purposes, backfill shortfalls in the Indian Gaming Revenue Sharing Trust Fund (“RSTF”), another fund created by the Legislature pursuant to the 1999 Compacts.**

**The compacts that took effect in May, 2000 (“1999 Compacts”) provided that only Tribes that operated more than 200 gaming devices on September 1, 1999 were obligated to pay into the SDF, with payments based on varying percentages of the net win from more than 200 gaming devices. Approximately 29 Tribes already were operating gaming devices on September 1, 1999, but not all of those Tribes were operating more than 200 gaming devices.**

**THE SDF, THE RSTF AND THE SDF SURPLUS**

**Over time, more Tribes established casinos under their 1999 Compacts, but because those Tribes did not operate more than 200 gaming devices on September 1, 1999, they were not required to pay into the SDF. Instead, Tribes desiring to operate more than 350 Gaming Devices had to draw gaming device licenses from a statewide pool of licenses created under the 1999 Compacts. Tribes that operated gaming devices on September 1, 1999 but desired to operate more than the greater of 350 or the number of gaming devices operated on September 1, 1999, also had to acquire gaming device licenses according to the 1999 Compact’s license fee schedule.**

**To draw gaming device licenses from the statewide license pool, a Tribe had to pay a one-time up-front fee for each license, and if the Tribe drew more than 350 licenses, to pay an annual fee on a sliding scale determined by how many licensed devices the Tribe operated. As a result, some Tribes have paid into the SDF from the inception of their 1999 Compacts, while other gaming Tribes with 1999 Compacts never have paid into the SDF. Some Tribes have paid into both the SDF and the RSTF, while some Tribes with very large gaming operations only pay into the RSTF, and in some instances, the State has agreed to defer the onset of RSTF payments for some Tribes.**

**The stated goal of the RSTF was to distribute up to $1.1 million per year to each California Tribe operating fewer than 350 gaming devices. However, the parties recognized that for at least some time after the 1999 Compacts took effect, gaming device license fees alone would be inadequate to fully fund the RSTF; thus, one of the authorized purposes of the SDF was to backfill any RSTF shortfalls. Until 2017, the SDF backfilled persistent RSTF shortfalls.**

**Later Compacts and the Rincon Band’s Secretarial Procedures moved away from the basing SDF payments on percentages of gaming device net win and the gaming device licensing scheme, substituting instead payments into the SDF based on a “pro rata share” formula,**[[1]](#footnote-1) **and payments into the RSTF based either on flat annual fees or percentages of gaming device net win (offset by various credits). Nonetheless, a relatively small number of Tribes with successful casinos have funded a disproportionately large percentage of the State’s regulatory and other compact-related costs. Until 2017, when the RSTF became fully funded through a combination of gaming device license fees and other payments directly into the RSTF by Tribes with new or amended Compacts, those same Tribes’ payments into the SDF also provided the funds necessary to backfill RSTF shortfalls.**

**Since 2017, the SDF has not been needed to backfill shortfalls in the RSTF. Instead, since 2017, the RSTF has been accumulating a substantial surplus of its own. In response, the State created the Tribal Nations Grant Fund (“TNGF”) as a way to move surplus funds out of the RSTF, notwithstanding the provision in the remaining 1999 compacts requiring that money in excess of the amount needed to disburse $1.1 million to each RSTF-eligible Tribe be retained in the RSTF for distribution in future years.**

**RELATIONSHIP BETWEEN THE SDF, LCBCs AND THE SDF SURPLUS**

**Among the authorized uses of the SDF under the 1999 Compacts was to fund grants to local governments impacted by tribal government gaming. The mechanism developed to implement this aspect of the SDF was legislation authorizing creation of a Local Community Benefit Committee (“LCBC”) in each County with a tribal gaming facility. These committees would administer grants sponsored by the County’s gaming Tribe(s).**

**Until 2014, the Legislature regularly directed a portion of the SDF to Counties with tribal gaming facilities, and LCBCs administered grants sponsored by the Tribes. Governor Schwarzenegger halted those payments, the Legislature did not resume them, and the statute that established the LCBF process expired in 2020.**

**THE SDF SURPLUS CANNOT BE JUSTIFIED AND MUST BE ELIMINATED**

**By 2017, the combined effect of the Legislature’s failure to continue directing a portion of the SDF to local governments, the end of RSTF shortfalls, the increasing number of Tribes paying into the SDF based on the State’s pro rata share formula, and the continued disproportionately large payments into the SDF by those Tribes obligated to pay percentages of their net win from gaming devices, has been to create a huge surplus in the SDF—a surplus that the State Auditor determined in December, 2022, already equaled nearly four years of the State Gaming Agency’s combined budget.**

**The SDF surplus has continued to balloon even as the State Auditor determined that State Gaming Agency and the State Department of Health’s Office of Problem Gambling improperly diverted substantial funds from the SDF and/or simply could not accurately account for how some SDF money has been and is being used. As the State Auditor’s August, 2022 report on the SDF noted,**

“As part of our review, we considered the likelihood of a future scenario that would cause the [SDF] reserve to return to reasonable levels without external intervention. We identified no such scenario. In the immediate term, without deliberate action from the Legislature, the distribution fund balance will remain excessive.”

1. The number of gaming devices statewide is divided into the Legislature’s appropriation for the State Gaming Agency to determine the per-device annual fee. [↑](#footnote-ref-1)